

FILED

NOV 26 2007

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

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No. 265471-III & 265480
Kittitas County Superior Court No. 07-2-00549-1

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

KITTITAS COUNTY CONSERVATION et al.,

Petitioners,

v.

KITTITAS COUNTY,

Respondent

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON
(BIAW), CENTRAL WASHINGTON HOME BUILDERS
ASSOCIATION, MITCHELL WILLIAMS, d/b/a/ MF WILLIAMS
CONSTRUCTION CO., TEANAWAY RIDGE, LLC, KITTITAS
COUNTY FARM BUREAU,

Intervenors,

ART SINCLAIR and BASIL SINCLAIR,

Amicus Curiae.

**WASHINGTON STATE DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT'S ANSWER TO
MOTION FOR DISCRETIONARY REVIEW**

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I. INTRODUCTION

Kittitas County Conservation, RIDGE, and Futurewise (KCC) filed a Notice of Discretionary Review and Motion for Discretionary Review of a Final Decision and Order issued by the Eastern Growth Management Hearings Board (Board) on August 20, 2007, in *Kittitas County Conservation v. Kittitas County*, Case No. 07-1-0004c. Pursuant to RCW 34.05.518 and RAP 6.3, their motion is supported by a Certificate of Appealability issued by the Board on October 22, 2007.

This answer is filed by the Washington State Department of Community, Trade, and Economic Development (CTED), pursuant to RAP 6.2, 6.3, and 17.4.¹ CTED supports KCC's Notice of Discretionary Review and Motion for Discretionary Review, and CTED agrees with KCC that this matter satisfies the criteria for direct review set forth in RCW 34.05.518.

II. ARGUMENT

CTED is a party to this matter, aligned with KCC.² CTED and KCC filed separate petitions for review with the Board, alleging

¹ Although KCC did not request oral argument on its motions, the Court scheduled oral argument for January 8, 2008. Accordingly, this answer is timely filed under RAP 6.2(c), 6.3, and 17.4(e).

² Kittitas County did not include CTED as a party in the caption of the County's Petition for Judicial Review, although the County did identify CTED as a party in the proceedings before the Board (page 3 of the petition) and served a copy of the petition on CTED. KCC's Motion for Discretionary Review uses the same caption, which does not

amendments to the Kittitas County Comprehensive Plan did not comply with the goals and requirements of the Growth Management Act (GMA), chapter 36.70A RCW. The petitions were consolidated. The four issues raised by CTED were also raised by KCC, although KCC raised a number of issues in addition to those argued by CTED. In its Final Decision and Order, the Board ruled in favor of CTED on all four issues CTED raised and argued; KCC prevailed on all but two of the issues they raised.

Two separate petitions were filed in Kittitas County Superior Court seeking judicial review of the Board's decision. KCC has filed parallel motions for discretionary review in both cases.³ On November 13, 2007, the Superior Court granted an uncontested motion to consolidate the two petitions.⁴ CTED appeared in response to both petitions. This Court therefore should consider KCC's two motions for discretionary review together and agree to accept review of the consolidated appeal.

Finally, as the prevailing parties before the Board, KCC and CTED are properly designated as respondents in this appeal, notwithstanding the

include CTED, but the motion notes CTED's status as a party (page 2 of the motion) and KCC served its motion and Notice of Discretionary Review on the undersigned attorney, who has represented CTED throughout this matter.

³ The other motion for discretionary review was filed in *Central Washington Home Builders Society v. Eastern Washington Growth Management Hearings Board*, No. 265480-III.

⁴ The Superior Court consolidated the cases under Kittitas County Superior Court No. 07-2-00552-1, which corresponds with *Central Washington Home Builders Society v. Eastern Washington Growth Management Hearings Board*, No. 265480-III.

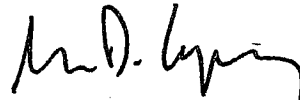
caption above, which was taken from the Petition for Judicial Review filed in the Superior Court by Kittitas County.

III. CONCLUSION AND RELIEF REQUESTED

This Court should grant KCC's Motion for Discretionary Review of this consolidated appeal and clarify that CTED and the Eastern Washington Growth Management Hearings Board, along with Kittitas County Conservation, RIDGE, and Futurewise, are properly denominated as respondents in this appeal.

RESPECTFULLY SUBMITTED this 21st day of November, 2007.

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 21st day of November, 2007, at Olympia, Washington.


Shirley Cordova